

Vuyo Kahla, Group Executive: Office of the Group Chief Executive

TRANSNET



Mr Langa Zita, MP
Chairperson
Portfolio Committee on Environmental Affairs and Tourism
Private Bag X15
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AND BY FAX: 021 403 2808

Dear Mr Zita

REPRESENTATIONS ON THE NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT BILL

In anticipation of the public hearings that the Portfolio Committee on Environmental Affairs and Tourism ("the Portfolio Committee") would be conducting on 29 February 2008 in respect of the National Environmental Management: Integrated Coastal Management Bill ("the Bill"), Transnet Limited ("Transnet") would appreciate being afforded the opportunity to make certain representations in relation to the Bill that have not previously been advanced. The need for making these representations only recently manifested itself as a result of concerns raised by a contracting party to whom Transnet is obligated.

In order to assist the Portfolio Committee in its deliberations on the Bill, Transnet hereby makes the representations set out below. The representations relate to the sale of the entire equity interest which Transnet and its three pension funds held in the V&A Waterfront Holdings (Pty) Limited ("V&A Waterfront Holdings") to Lexshell 44 General Trading (Pty) Limited ("Lexshell").

Transnet was the registered owner of the properties constituting the V&A Waterfront between 1990 and 1995. Transnet subsequently sold and transferred these properties to the Transnet Pension Fund. As a result of the restructuring of the V&A Waterfront company structure, these properties were transferred in 2001 into the name of V&A Properties (Pty) Limited. In support of that restructuring, Transnet undertook certain contractual obligations regarding the reclamation of land from the sea that would be required for the remaining anticipated

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development of the V&A Waterfront. The abovementioned sale of the equity interest in V&A Waterfront Holdings to Lexshell resulted in Lexshell becoming entitled to claim performance by Transnet of its contractual obligations related to the reclamation of land.

It stands to reason that the new legal dispensation to be introduced by the Bill will have far reaching implications for Transnet being able to honour its contractual obligations to Lexshell in so far as the reclamation of land, as contemplated in contractual arrangements that Transnet is party to, is concerned. In consequence, Transnet is seeking appropriate transitional arrangements in the Bill that will –

- (a) enable Transnet to obtain the necessary approval for the reclamation of the land in question and to procure the granting of such land to Transnet under current legislation;
- (b) allow Transnet to transfer such reclaimed land to Lexshell;
- (c) allow Lexshell to acquire ownership of the reclaimed land and to develop it in accordance with a master plan for the further development of the V&A Waterfront; and
- (d) safeguard Lexshell's interests and title in the V&A Waterfront properties.

We have taken the liberty to propose the following drafting options which we believe constitute appropriate transitional arrangements, to be contained in the Bill:

Option 1

"Transitional arrangements related to the V&A Waterfront

95A. Despite the repeal of the Sea-shore Act, 1935 (Act No. 21 of 1935), Transnet Limited is authorised to–

- (a) apply for the reclamation of any portion of the sea-shore or the sea related to properties constituting what is commonly known as the V&A Waterfront under that Act as if it has not been repealed;
- (b) procure the granting of such reclaimed portion of the sea-shore or sea to Transnet under that Act as if it has not been repealed; and
- (c) transfer full title in any property granted as envisaged by

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paragraph (b) to any party in compliance with any contractual obligations that Transnet Limited may have towards such party, which precede the coming into force of this Act.

Option 2

Transitional arrangements related to the V&A Waterfront

- 95A.** (1) This Act does not apply to the properties constituting what is commonly known as the V&A Waterfront and any portion of the sea-shore or sea directly related to those properties.
- (2) The Minister must make regulations regarding -
- (a) the application process to be followed for the reclamation of any portion of the sea-shore or sea referred to in subsection (1);
 - (b) the process to be followed for obtaining approval for any development of the V&A Waterfront referred to in subsection (1);
 - (c) the vesting of ownership of any property (including reclaimed land) referred to in subsection (1); and
 - (d) any matter necessary for the proper environmental management of the V&A Waterfront referred to in subsection (1).

In so far as the Portfolio Committee may require oral presentations or explanations to further elaborate on any of the matters raised above, Transnet would avail itself to address the Portfolio Committee.

Kind regards

Vuyo D. Kahla

Group Executive: Office of the Group Chief Executive

Date: 27 February 2008